POST-REDEVELOPMENT: WHAT'S NEXT FOR LOCAL ECONOMIC DEVELOPMENT

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By Seth Merewitz

California's economy is still suffering, local government is contracting, public financing is constrained and private debt and equity sources are scarce. Despite all this, economic development, affordable housing and infrastructure investment are still desperately needed and relevant in our communities.

The immediate challenge facing public officials in the wake of the Supreme Court's decision in *California Redevelopment Agency v. Matosantos* is how to develop these much-needed projects without the tools of traditional tax increment-based redevelopment, which has been the norm under the Community Redevelopment Law for the past 65 years.

In the upcoming weeks and months, we may see the state legislature spearhead a redevelopment revival of some sort, or perhaps local government will devise the next generation of economic incentive tools. Needless to say, local government in California has never been more exciting… uncomfortable, uncertain…but exciting, nonetheless.

California will continue to grow and prosper. Like everything else it does, California has historically been at the forefront of many political and economic revelations. The only question is: Where will California's next "Eureka!" come from?

Opportunities after the Recent California Supreme Court Decision. In light of the recent California Supreme Court opinion upholding AB 1X 26 and invalidating AB 1X 27, redevelopment, as we have known it, has been shut down in California. In this post-redevelopment environment, cities and counties need to identify and evaluate potential opportunities and emerging areas. Local officials and the development community challenged by enhanced needs for local economic development, but facing limited resources and cuts in other state and federal grants and programs, must utilize all available resources – and potential partnerships - to make new economic development efforts successful.

These opportunities and emerging areas can be categorized as:

- Public-Private Partnerships;
- New and Emerging Statutory Tools;
- Revisiting Old Tools ("What's old is new again");
- Potential Tools (not yet authorized in California); and
- Non-Monetary Forms of Project Assistance.

Public-Private Partnerships. While recent economic and legislative events have depleted *public* resources available to meet the increasing social demands for capital projects and services, *private* capital may fill the gap in the form of public-private partnerships. The demand from public agencies searching for creative ways to solve problems remains high. Ideally, that demand will be addressed by private investors bringing the capital and expertise to develop the necessary projects.

A "Public-Private Partnership" is a contractual agreement between a public agency (federal, state or local) and a private sector entity. Through this agreement, the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the potential risks and rewards in the delivery of the service or facility.

Both sides need to evaluate the allocation and management of the risks inherent in a particular project, including evaluation of issues related to design, construction, operation, financing and taxation impacts, as well as state and federal regulatory issues. With the transition away from redevelopment, there will be new and evolving public-private contractual arrangements for local-serving projects, including public infrastructure and sustainable and infill development, as well as commercial and industrial projects. The proper alignment of public and private interests is critical for success.

Public-private partnerships will be mechanisms for public entities, private project proponents and investors to use in various contexts, such as the delivery of capital projects or services, asset monetization and fee-producing infrastructure, alternative forms of procurement, concession agreements and various forms of leasing.

These are, in many respects, the same types of deals with which redevelopment agencies have been involved for decades. Now the challenge is to develop them and foster their success without tax increment financing as we have known it for decades.

New and Emerging Statutory Tools. Many new state and federal statutory tools are developing and gaining acceptance in California. These include: New Market Tax Credits, California Infrastructure and Economic Development Bank and infrastructure financing districts (legislation to simplify approval stalled in 2011, but will likely return in 2012).

As these are relatively new, they have not been widely accepted or used to date. Frankly, with redevelopment agencies in the forefront, there has been little need for these other smaller-scale programs. The Supreme Court's decision now has forced the hand of local agencies and developers and may very well lead to a flurry of activity in these previously little-used tools. As the focus moves to delivering jobs and economic development, we can expect these tools to become more broadly used, independently or in conjunction with public-private partnerships, in the absence of other available options.

Revisiting Old Tools ("What's Old is New Again"). Of course, there are many other existing economic and project development tools and incentives in use around the State. However, many have fallen out of favor for various reasons. It is fair to say that these devices may very well be dusted off and used once again in future projects. Some examples are:

- *Special Districts*, e.g. infrastructure and services Community Facility Districts, special tax vehicles, assessment districts and school facility improvement districts;

- *Municipal Tools*, e.g. ground lease or sale of publicly-owned land, development agreements, design-build, lease-leaseback and eminent domain; and

- *Public Financing Tools*, e.g. lease revenue bonds, industrial development bonds, private activity bonds (for market-rate and affordable housing) and certificates of participation.

For many of these financing structures, one of the emerging areas may be with bank lenders or credit enhancement, rather than public bond offerings. This would work especially well for private projects, such as housing, but may also be effective in some cases for public, revenue producing projects or general fund financings. Each project must be analyzed for its potential financial sources and uses to pull together the most appropriate public and private financing plan.

Potential Tools (not yet authorized in California). With the apparent demise of traditional redevelopment, California must take heed of which programs in other states have successfully promoted economic development and job creation. Some options to consider include: sales tax sharing, sales tax revenue bonds, isolated project revenues (sales tax, sewer/water fees) reinvested in projects and other locally-approved incentive programs.

Another reasonable alternative is a revised tax increment financing district mechanism. Other states using tax increment financing have utilized smaller project areas (e.g. Illinois) and requirements to demonstrate economic feasibility and benefit before district approval (e.g. New Mexico).

Non-Monetary Forms of Project Assistance. In addition to various mechanisms to assist projects by financing or various partnering opportunities, cities and counties can also provide non-monetary assistance to potential investors in projects. These include political consistency, stability, commitment and leadership; defined plans and clear road maps to reduce surprises; expedited processing and pre-entitled land; and for the most desired projects, city or county credit to back projects**.** Local officials, developers and investors all benefit when the projects have an element of certainty attached to them.

Final thoughts on redevelopment. Even though the California Supreme Court has dealt a seeming death-blow to redevelopment in the near term, there are already rumblings of legislative efforts to restore redevelopment in some fashion. The job generation, local economic benefits and affordable housing produced by redevelopment far outshine the reported abuses. Local communities need and want tools to assist projects and local investment. Moreover, the goals of SB 375 and infill development are closely tied to continued redevelopment activities.

Even Dan Walters, columnist for the *Sacramento Bee* and long time naysayer of redevelopment, has suggested that redevelopment should be "[R]einstated, but with very tight limits that would restore its original purpose of dealing with blight…" ("Redevelop In State, But Set Limits," January 3, 2012).

The remaking of redevelopment in California may need to go beyond "blight elimination," and require a more comprehensive update to build the constituency for the economic development, job creation, infrastructure investments, sustainable/infill development, catalyst projects and affordable housing brought about by redevelopment.

Conclusion. If redevelopment is not reinstated in some fashion by the legislature, then the successor agencies will be charged with meeting enforceable obligations entered into by the redevelopment agency as well as performing many other wind down functions. Moreover, the successor agencies will begin the process of selling off all of the commercial, industrial, residential and even vacant land assets currently held by redevelopment agencies across California. This inventory of property for sale throughout the state will present vast opportunities for investors to pick up real estate assets and trigger future economic development or add more real estate inventory to a flooded and depressed market.

Regardless of what happens, there is little doubt that future economic development in California will involve the use of public-private partnerships, emerging statutory tools, revising existing tools or new tools that may not even have been contemplated or used elsewhere.

We are California and we do it our own way. Eureka!

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